



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-4251/P2  
RLB:nwn&kjfrs

Friday Am

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Rmnvr

1 AN ACT *to repeal* 165.76 (2); *to amend* 165.76 (1) (intro.), 165.76 (1) (a), 165.76  
2 (1) (ag), 165.76 (1) (ar), 165.76 (1) (b), 165.76 (1) (c), 165.76 (1) (d), 165.76 (1) (e),  
3 165.76 (1) (f), 165.76 (3), 165.76 (4), 971.17 (1m) (a) and 973.047 (1f); and *to*  
4 *create* 165.76 (1) (av), 165.76 (1) (br), 165.76 (1) (cr), 165.76 (1) (g), 165.76 (1)  
5 (h), 165.76 (1m), 165.76 (2m), 165.76 (2r), 165.76 (6) and 801.50 (5v) of the  
6 statutes; **relating to:** submission of biological specimens for deoxyribonucleic  
7 acid analysis.

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***Analysis by the Legislative Reference Bureau***

Under current law, certain people are required to provide a deoxyribonucleic acid (DNA) sample to the Department of Justice (DOJ), and DOJ is required to analyze the sample and include results of the analysis in a DNA data bank. Since 1993, persons sentenced, or in prison, for certain sexual assaults have been required to provide DNA samples. Since 2000, persons sentenced, or in prison, for any felony and several specified misdemeanors have been required to provide DNA samples. In addition, persons committed as sexually violent persons, persons found not guilty by reason of mental disease or defect for certain sexual assaults, and juveniles adjudicated delinquent for certain sexual assaults or, at the discretion of the court, certain other offenses, are required to provide a DNA sample. A person who intentionally fails to comply with a requirement to provide a DNA sample is guilty of a misdemeanor.

Current statutes specify when and where each category of people required to provide a DNA sample must provide the DNA sample. Administrative rules also specify when and where people must provide DNA samples, although the rule requirements are somewhat different than the statutory requirements for certain categories. For example, under both the statute and the rule a person sentenced to prison must provide a DNA sample while in prison if directed to do so by the Department of Corrections (DOC). If the person does not provide the DNA sample while in prison, under the statute the person must provide the sample at the sheriff's office as soon as practicable after release as directed by a supervising agent; and under the rule the person must provide the sample at the sheriff's office or as directed by his or her supervising agent. Under the statutes, a person placed on probation must provide the DNA sample at the office of a county sheriff as soon after placement as practicable, as directed by his or her supervising agent. Under the rule, a person placed on probation must provide the DNA sample at the office of a county sheriff as soon after the placement as practicable, or as directed by his or her supervising agent.

This bill specifies that a requirement to provide a DNA sample does not expire when a person completes serving probation, a sentence, or delinquency disposition or is released from commitment. For example, if a person is required to provide a DNA sample because he or she was in prison for a felony on or after January 1, 2000, and the person does not provide the DNA sample before leaving prison, he or she is still required to provide a DNA sample. In addition, the bill provides that regardless of whether a person already provided a DNA sample, if DOJ does not have DNA analysis results for the person, the department may require the person to provide another DNA sample.

The bill establishes a process under which a district attorney may petition the court to compel a person to provide a DNA sample if the person is required to provide a DNA sample but refuses or fails to do so. Under the bill, if the district attorney demonstrates reasonable cause to believe that a person is required to provide a DNA sample and that DOJ does not have DNA analysis results from the person, and further establishes the circumstances under which the requirement for the person to provide a DNA sample arose, the court must order the person to appear for a hearing to show cause why he or she is not required to provide a DNA sample or to provide a DNA sample before the hearing date. If the person does not provide a DNA sample before the hearing and, at the hearing, the person does not disprove the district attorney's claim that the person is required to provide a DNA sample, the court must issue an order to facilitate collection of a DNA sample from the person, which may include detention of the person or use of reasonable force. *INS A*

The bill provides that people who are required to provide a DNA sample must provide it as follows:

1. A person sentenced to prison or a juvenile correction facility must provide the DNA sample while in prison or the facility, as directed by DOC; and if the person does not provide the DNA sample while in prison or the facility, then as soon as practicable after release, at a sheriff's office or as directed by the person's supervising agent.

2. A person placed on probation by a court in this state must provide the DNA sample as soon as practicable after placement, at the sheriff's office or as directed by the person's supervising agent.

3. A person placed on parole or probation in this state from another state, if directed by DOC to provide a DNA sample, must provide the DNA sample, as soon as practicable after release, at the office of the county sheriff or as directed by the person's supervising agent.

4. A juvenile placed on supervision shall provide the DNA sample as soon as practicable after placement, at the sheriff's office or as directed by the agency providing supervision.

5. A person sentenced to jail or a county house of corrections must provide the DNA sample as directed by the sheriff as soon as practicable after sentencing; and if the person does not provide the biological specimen while in jail or the house of corrections, as soon as practicable after release at a sheriff's office.

6. A person committed to the Department of Health Services (DHS) must provide the DNA sample as directed by DHS.

7. If none of the above applies, the person must provide the DNA sample as soon as practicable after the obligation to provide a DNA sample arises, at the sheriff's office or as directed by the agency providing supervision or having custody of the person.

Finally, the bill provides that a person found not guilty by reason of mental disease or defect, or in institutional care, on or after January 1, 2000, for a felony or certain specified misdemeanors must provide a DNA sample. In addition a person convicted, found not guilty by reason or mental disease or defect, or placed in institutional care on or after January 1, 2000 for failure to provide a DNA sample must provide a DNA sample as a result of the conviction, finding, or placement.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 165.76 (1) (intro.) of the statutes is amended to read:

2           165.76 (1) (intro.) ~~Except as provided in sub. (3), a~~ A person shall comply with  
3 ~~the requirements under this section provide a biological specimen to the state crime~~  
4 ~~laboratories for deoxyribonucleic acid analysis~~ if he or she meets any of the following  
5 criteria:

6           **SECTION 2.** 165.76 (1) (a) of the statutes is amended to read:

1           165.76 (1) (a) Is or was in a juvenile correctional facility, as defined in s. 938.02  
2           (10p), or a secured residential care center for children and youth, as defined in s.  
3           938.02 (15g), or on probation, extended supervision, parole, supervision, or aftercare  
4           supervision on or after August 12, 1993, for any violation of s. 940.225 (1) or (2),  
5           948.02 (1) or (2), 948.025, or 948.085.

6           **SECTION 3.** 165.76 (1) (ag) of the statutes is amended to read:

7           165.76 (1) (ag) Is or was in prison on or after August 12, 1993, and before  
8           January 1, 2000, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), or 948.025.

9           **SECTION 4.** 165.76 (1) (ar) of the statutes is amended to read:

10          165.76 (1) (ar) Is or was in prison on or after January 1, 2000, for a felony  
11          committed in this state.

12          **SECTION 5.** 165.76 (1) (av) of the statutes is created to read:

13          165.76 (1) (av) Is or was found guilty on or after January 1, 2000, of any felony  
14          or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

15          **SECTION 6.** 165.76 (1) (b) of the statutes is amended to read:

16          165.76 (1) (b) Is Has been found not guilty or not responsible by reason of  
17          mental disease or defect on or after August 12, 1993, and committed under s. 51.20  
18          or 971.17 for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

19          **SECTION 7.** 165.76 (1) (br) of the statutes is created to read:

20          165.76 (1) (br) Has been found not guilty or not responsible by reason of mental  
21          disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17,  
22          for any felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

23          **SECTION 8.** 165.76 (1) (c) of the statutes is amended to read:

24          165.76 (1) (c) Is or was in institutional care on or after August 12, 1993, for any  
25          violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

1           **SECTION 9.** 165.76 (1) (cr) of the statutes is created to read:

2           165.76 (1) (cr) Is or was in institutional care on or after January 1, 2000, for  
3 a felony or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

4           **SECTION 10.** 165.76 (1) (d) of the statutes is amended to read:

5           165.76 (1) (d) ~~Is~~ Has been found to be a sexually violent person under ch. 980  
6 on or after June 2, 1994.

7           **SECTION 11.** 165.76 (1) (e) of the statutes is amended to read:

8           165.76 (1) (e) Is or was released on parole or extended supervision or placed on  
9 probation in another state before January 1, 2000, and is or was on parole, extended  
10 supervision, or probation in this state from the other state under s. 304.13 (1m),  
11 304.135, or 304.16 on or after July 9, 1996, for a violation of the law of the other state  
12 that the department of corrections determines, under s. 304.137 (1), is comparable  
13 to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

14          **SECTION 12.** 165.76 (1) (f) of the statutes is amended to read:

15          165.76 (1) (f) Is or was released on parole or extended supervision or placed on  
16 probation in another state on or after January 1, 2000, and is or was on parole,  
17 extended supervision, or probation in this state from the other state under s. 304.13  
18 (1m), 304.135, or 304.16 for a violation of the law of the other state that the  
19 department of corrections determines, under s. 304.137 (2), would constitute a felony  
20 if committed by an adult in this state.

21          **SECTION 13.** 165.76 (1) (g) of the statutes is created to read:

22          165.76 (1) (g) Has been required by a court under s. 51.20 (13) (cr), 938.34  
23 (15m), 971.17 (1m) (a), 973.047, or 980.063 to provide a biological specimen to the  
24 state crime laboratories for deoxyribonucleic acid analysis.

25          **SECTION 14.** 165.76 (1) (h) of the statutes is created to read:

1           165.76 (1) (h) Is notified by the department of justice, the department of  
2           corrections, a district attorney, or a county sheriff under sub. (1m) that the person  
3           is required to provide a biological specimen.

4           **SECTION 15.** 165.76 (1m) of the statutes is created to read:

5           165.76 (1m) If a person is required to provide a biological specimen under sub.  
6           (1) (a) to (g) and the department of justice does not have the data obtained from  
7           analysis of a biological specimen from the person that the department is required to  
8           maintain in the data bank under s. 165.77 (3), the department may require the  
9           person to provide a biological specimen, regardless of whether the person previously  
10          provided a biological specimen under this section or s. 51.20 (13) (cr), 938.34 (15),  
11          971.17 (1m) (a), 973.047, or 980.63. The department of justice, the department of  
12          corrections, a district attorney, or a county sheriff, shall notify any person whom the  
13          department justice requires to provide a biological specimen under this subsection.

14          **SECTION 16.** 165.76 (2) of the statutes is repealed.

15          **SECTION 17.** 165.76 (2m) of the statutes is created to read:

16          165.76 (2m) Unless otherwise provided by rule under sub. (4), a person who is  
17          required to provide a biological specimen under sub. (1) shall provide the biological  
18          specimen at the following time and place:

19               (a) If the person has been placed on probation by a court in this state, as soon  
20               as practicable after placement, at the office of a county sheriff or as directed by the  
21               person's probation, extended supervision, and parole agent.

22               (b) If the person has been on probation, parole, or extended supervision in this  
23               state from another state and the department of corrections directs the person to  
24               provide a biological specimen, as soon as practicable after placement, at the office of

1 a county sheriff or as directed by the person's probation, extended supervision, and  
2 parole agent.

3 (c) If the person has been placed on supervision as a juvenile, as soon as  
4 practicable after placement, at the office of a county sheriff or as directed by the  
5 agency providing supervision.

6 (d) If the person has been sentenced to prison, while in prison as directed by  
7 the department of corrections; and if the person does not provide the biological  
8 sample while in prison, then as soon as practicable after release from the prison, at  
9 the office of a county sheriff or as directed by his or her probation, parole, and  
10 extended supervision agent.

11 (e) If the person has been placed in a juvenile correctional facility, while in the  
12 juvenile correctional facility as directed by the department of corrections; and if the  
13 juvenile does not provide the biological specimen while in the juvenile correctional  
14 facility, then as soon as practicable after release from the juvenile correctional  
15 facility, at the office of a county sheriff or as directed by the agency providing  
16 supervision.

17 (f) If the person has been sentenced to a county jail or county house of  
18 corrections, as directed by the office of the county sheriff as soon as practicable after  
19 sentencing; and if the person does not provide the biological specimen while in the  
20 county jail or county house of corrections, as soon after release from the county jail  
21 or county house of corrections as practicable, at the office of a county sheriff.

22 (g) If the person has been committed to the department of health services under  
23 s. 51.20 or 971.17 or found to be a sexually violent person under ch. 980, as directed  
24 by the department of health services.

1 (h) If pars. (a) to (g) do not apply, as soon as practicable after the obligation to  
2 provide a biological specimen accrues, at the office of a county sheriff or as directed  
3 by the agent or agency providing supervision or having legal or physical custody of  
4 the person.

5 **SECTION 18.** 165.76 (2r) of the statutes is created to read:

6 165.76 (2r) Failure by a person who is required to provide a biological specimen  
7 under sub. (1) to provide the biological specimen at the time and place provided under  
8 sub. (2m) does not relieve the person of the obligation to provide a biological specimen  
9 to the state crime laboratories for deoxyribonucleic acid analysis.

10 **SECTION 19.** 165.76 (3) of the statutes is amended to read:

11 165.76 (3) If Notwithstanding sub. (1), if a county sheriff, the department of  
12 corrections, or the department of health services determines that a person who is  
13 required to submit a biological specimen under s. 51.20 (13) (er), 938.34 (15), 971.17  
14 (1m) (a), 973.047 or 980.063, he or she shall comply with that requirement and is not  
15 required to comply with this section sub. (1) has submitted a biological specimen and  
16 that data obtained from analysis of the person's biological specimen is included in the  
17 data bank under s. 165.77 (3), the person is not required to submit another biological  
18 specimen.

19 **SECTION 20.** 165.76 (4) of the statutes is amended to read:

20 165.76 (4) The department of justice ~~shall~~ may promulgate rules necessary to  
21 ~~carry out its duties under~~ to implement this section.

22 **SECTION 21.** 165.76 (6) of the statutes is created to read:

23 165.76 (6) (a) If a person who is required to provide a biological specimen under  
24 sub. (1) refuses or fails to provide a biological specimen, a district attorney may file  
25 a petition with the circuit court for an order compelling the person to provide a


1 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.  
2 A petition under this paragraph shall establish reasonable cause to believe that the  
3 the person is required to provide a biological specimen under sub. (1) and that the  
4 person's biological specimen is not included in the data bank under s. 165.77 (3), and  
5 shall establish the circumstances under which the requirement to provide the  
6 biological specimen arose.

7 (b) If the court determines that a district attorney's petition satisfies the  
8 conditions under par. (a), the court shall issue an order requiring the person to  
9 appear in court at a specified time for a hearing to show cause why he or she is not  
10 required to provide a biological specimen under sub. (1) or to provide a biological  
11 specimen at the office of the county sheriff before the time for which the hearing is  
12 scheduled. The hearing shall be scheduled for not less than 10 and not more than  
13 45 days after the date the court enters the order. The order, together with a copy of  
14 the petition and any supporting material, shall be personally served upon the person  
15 in the manner provided for serving a summons under s. 801.11.

16 (c) At a hearing on a petition under par. (a), the person has the burden of  
17 rebutting the matters established in the petition by demonstrating that he or she is  
18 not required to submit a biological specimen under sub. (1).

19 (d) If the court determines after the hearing under par. (c) that the person is  
20 required to submit a biological specimen under sub. (1) and that the person's  
21 specimen is not included in the data bank under s. 165.77 (3), the court shall issue  
22 an order to facilitate collection of a biological specimen from the person, which may  
23 authorize detention of the person or use of reasonable force against the person to  
24 collect the biological specimen.

25 **SECTION 22.** 801.50 (5v) of the statutes is created to read:

The order shall be in substantially the following form:   
INS FORM

1           801.50 (5v) Venue of an action under s. 165.76 (6) shall be in any of the following  
2 counties:

3           (a) The county where the respondent resides.

4           (b) The county in which a court order requiring the respondent to submit a  
5 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis  
6 was entered.

7           (c) The county in which any court proceeding was held that resulted in a  
8 requirement that the respondent submit a biological specimen to the state crime  
9 laboratories for deoxyribonucleic acid analysis.

10           **SECTION 23.** 971.17 (1m) (a) of the statutes is amended to read:

11           971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of  
12 mental disease or defect for a felony or a violation of s. 940.225 (1) or (2), 948.02 (1)  
13 or (2), 948.025, or 948.085 165.765 (1), 940.225 (3m), 944.20, or 948.10, the court shall  
14 require the person to provide a biological specimen to the state crime laboratories for  
15 deoxyribonucleic acid analysis.

16           **SECTION 24.** 973.047 (1f) of the statutes is amended to read:

17           973.047 (1f) If a court imposes a sentence or places a person on probation for  
18 a felony conviction or for a conviction for a violation of s. 165.765 (1), 940.225 (3m),  
19 944.20, or 948.10, the court shall require the person to provide a biological specimen  
20 to the state crime laboratories for deoxyribonucleic acid analysis.

21           (END)

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4251/P3ins  
RLR:.....

**Ins A:**

*not* Under the bill, the rules of evidence, other than rules for admissibility and privileges, do not apply to proceedings on a petition to compel a person to provide a DNA sample.

**Ins 10-9:**

*(1)*  
**SECTION 1.** 814.61 (c) 7. of the statutes is created to read:

*no (3) (1) (5)*  
**814.61** (c) 7. An action under s. 165.76 (6) to compel provision of a biological specimen for deoxyribonucleic acid analysis.

**SECTION 2.** 911.01 (4) (c) of the statutes is amended to read:

*as affected by 2009 Wisconsin Act 28,*  
911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting or revoking probation, modification of a sentence under s. 302.1135, adjustment of a bifurcated sentence under s. 973.195 (1r), release to extended supervision under s. 302.113 (2) (b) or 304.06 (1) or discharge under s. 973.01 (4m), issuance of arrest warrants, criminal summonses and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969; and proceedings under s. 165.76 (6) to compel provision of a biological specimen for deoxyribonucleic acid analysis.

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

425111  
LRB-1677/11ms  
MJL:jld:pg

STATE OF WISCONSIN

CIRCUIT COURT : .... COUNTY

STATE OF WISCONSIN

Plaintiff,

vs.

A.B.

Address

City, State, Zip Code

Respondent

File No. ....

ORDER

THE STATE OF WISCONSIN, To the Respondent named above:

Unless you choose to contest this Order, by appearing at the time, date, and place set forth below, you are ordered to present yourself to the .... county sheriff, [ADDRESS], no later than ...., between the hours of .... and ...., for the collection of a biological specimen, obtained by buccal swab, for deoxyribonucleic acid (DNA) analysis and inclusion of the results of that analysis in the state crime laboratory's DNA database. YOU MUST BRING A COPY OF THIS ORDER WITH YOU. YOU MUST ALSO BRING TWO FORMS OF IDENTIFICATION, INCLUDING ONE FORM OF GOVERNMENT-ISSUED, PHOTOGRAPHIC IDENTIFICATION. A copy of the petition submitted to obtain this order is attached.

If you wish to contest this order, you may do so by appearing in person at the time, date, and place set forth above, at which time you will have the opportunity to

show cause to the court why you should not be required to provide a biological specimen for DNA analysis:

[Court information]

If you do not appear in person to contest this order at the time, date, and place set forth above, and you do not either present yourself for collection of a biological specimen as directed, all of the following apply:

1. You may be held in contempt of court and be subject to sanctions as provided in chapter 785 of the Wisconsin Statutes.

2. The court will issue an order which, including, in the court's discretion, may authorize the detention or use of reasonable force against you to collect the biological specimen.

Dated: ..., ... (year)

By the court signed: ....

This Order is entered under section 165.76 (6) of the Wisconsin Statutes. A copy of that section is attached.

INSERT on p. 9

STATE OF WISCONSIN  
COUNTY \_\_\_\_\_

CIRCUIT COURT

File No. ....

STATE OF WISCONSIN,  
Plaintiff,

v. s

File No. ....

Respondent,

ORDER

Re: Summons (?)

To:

Name A. B.  
Address  
City, State, Zip Code

THE STATE OF WISCONSIN, to the Respondent named above:

If you wish to contest this order, you may do so by appearing in person at the time, date and place set forth below, at which time you will have the opportunity to show cause to the court why you should not be required to provide a biological specimen for deoxyribonucleic acid analysis: DNA

[Court information]

Unless you choose to contest this Order, by appearing at the time, date and place set forth above, you are hereby commanded to present yourself to the \_\_\_\_\_ county sheriff, [ADDRESS], no later than \_\_\_\_\_, between the hours of \_\_\_\_\_ and \_\_\_\_\_, for the collection of a biological specimen, obtained by buccal swab, for deoxyribonucleic acid analysis and inclusion of the results of that analysis in the state crime laboratory's DNA database. **YOU MUST BRING A COPY OF THIS ORDER WITH YOU. YOU MUST ALSO BRING TWO FORMS OF IDENTIFICATION, INCLUDING ONE FORM OF GOVERNMENT-ISSUED, PHOTOGRAPHIC IDENTIFICATION.** A copy of the application submitted to obtain this order is attached hereto.

If you do not appear in person to contest this order at the time, date, and place set forth above, and you do not either present yourself for collection of a biological specimen as directed herein:

all of the following apply

authorizes the  
detention

1. You may be held in contempt of court and be subject to sanctions as provided in chapter 785 of the Wisconsin Statutes, and.

2. The court will issue an order which facilitates provision of the biological specimen, including, in the court's discretion, authorization to detain or use reasonable force against the respondent to collect the biological specimen.

you

This Order is hereby entered pursuant to section 165.76(6) of the Wisconsin Statutes. A copy of that section is attached hereto.

Date: ... (year)

By the Court signed: ...

**Ryan, Robin**

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**From:** Rinehart, Mark W. [RinehartMW@DOJ.STATE.WI.US]

**Sent:** Friday, March 12, 2010 10:36 AM

**To:** Ryan, Robin

**Subject:** lrb-4251/p2 dna submission

**Attachments:** 2009 lrb-4251-p2 changes memo.doc

Hello Robin,

Here are comments on your drafter's note and the P2 version we received yesterday.

Thank you.

03/12/2010

**CORRESPONDENCE/MEMORANDUM****DEPARTMENT OF JUSTICE**

Date: March 12, 2010

To: Robin Ryan

From: Kevin St. John

Subject: LRBN 4251/P2

Comments to Drafter's Note:

- ~~(1)~~ That is acceptable.
- ✓(2) The draft's language tracked the existing rule, however the drafter's suggestion is an improvement on that language because it does remove potential ambiguity. We would find those changes acceptable.
- ✓(3) There was no intentional omission of this class of juvenile and we could see an argument that they are not covered under 165.76(c). Please amend 165.76(2m)(e) to include this group.
- ✓(4) Our intent is to allow for any service permitted under Wis. Stat. § 801.11 (1) and (2).
- ~~(5)~~ Form sent on March 11, 2010; please include.
- ~~(6)~~ We understand.

Additional Instructions (emailed by Mark Rinehart earlier on March 11, 2010).

- ✓ ■ Please exempt the special proceeding [proposed 165.76(6)] from court fees. (As this is a special proceeding, I would understand that civil rules would apply and civil rules create a presumption for fees, unless otherwise exempted. *See* Wis. Stat. § 814.61).
- ✓ ■ Please exempt the special proceeding [proposed 165.76(6)] from the rules of evidence by modifying Wis. Stat. § 911.01(4)(c) to reference the special proceeding.
- ✓ ■ Please specify power to bring action in District Attorneys section, by amending Wis. Stat. § 978.05(6) to reference the special proceeding [proposed 165.76(6)] if you believe this is appropriate to enhance statutory uniformity.

Additional instructions re: LRB—4251/P2

- ✓ ■ Page 6, line. 13: ADD “of” between “department” and “justice.”

- ✓ ▪ Page 9, line 4-6: DELETE “and shall establish the circumstances under which the requirement to provide the biological specimen arose,” thus ending the subsection with “165.77(3).”

COMMENT: On further reflection, this language we would like to strike is duplicative of establishing that the person is required to provide a specimen under sub. (1). The fact a person is required to provide a specimen is the “circumstances under which the requirement” arose, and any ambiguity invites an argument that the underlying matter needs to be re-established.

- One DOJ staff commented that Section 21, proposed 165.76(6)(b) can be read as ambiguous in that the court might select among two orders (appear in court or go to the sheriff), while the intent is a single order that can be complied with by alternative means. This ambiguity is removed if the form is published, but it might be a good idea to also remove it from the text. To do this, at page 9, line 10, ADD “in lieu of the hearing” between “or” and “to”. There may be need for punctuation as well. If the form is published, we leave this matter to your discretion.



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-4251/1<sup>2</sup>

RLR&RPN:nwn&kjf:rs

Today

2009 BILL

RMR

Regen

1 AN ACT *to repeal* 165.76 (2); *to amend* 165.76 (1) (intro.), 165.76 (1) (a), 165.76  
2 (1) (ag), 165.76 (1) (ar), 165.76 (1) (b), 165.76 (1) (c), 165.76 (1) (d), 165.76 (1) (e),  
3 165.76 (1) (f), 165.76 (3), 165.76 (4), 911.01 (4) (c), 971.17 (1m) (a) and 973.047  
4 (1f); and *to create* 165.76 (1) (av), 165.76 (1) (br), 165.76 (1) (cr), 165.76 (1) (g),  
5 165.76 (1) (h), 165.76 (1m), 165.76 (2m), 165.76 (2r), 165.76 (6), 801.50 (5v) and  
6 814.61 (1) (c) 7. of the statutes; **relating to:** submission of biological specimens  
7 for deoxyribonucleic acid analysis.

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***Analysis by the Legislative Reference Bureau***

Under current law, certain people are required to provide a deoxyribonucleic acid (DNA) sample to the Department of Justice (DOJ), and DOJ is required to analyze the sample and include results of the analysis in a DNA data bank. Since 1993, persons sentenced, or in prison, for certain sexual assaults have been required to provide DNA samples. Since 2000, persons sentenced, or in prison, for any felony and several specified misdemeanors have been required to provide DNA samples. In addition, persons committed as sexually violent persons, persons found not guilty by reason of mental disease or defect for certain sexual assaults, and juveniles adjudicated delinquent for certain sexual assaults or, at the discretion of the court, certain other offenses, are required to provide a DNA sample. A person who intentionally fails to comply with a requirement to provide a DNA sample is guilty of a misdemeanor.

**BILL**

Current statutes specify when and where each category of people required to provide a DNA sample must provide the DNA sample. Administrative rules also specify when and where people must provide DNA samples, although the rule requirements are somewhat different than the statutory requirements for certain categories. For example, under both the statute and the rule a person sentenced to prison must provide a DNA sample while in prison if directed to do so by the Department of Corrections (DOC). If the person does not provide the DNA sample while in prison, under the statute the person must provide the sample at the sheriff's office as soon as practicable after release as directed by a supervising agent; and under the rule the person must provide the sample at the sheriff's office or as directed by his or her supervising agent. Under the statutes, a person placed on probation must provide the DNA sample at the office of a county sheriff as soon after placement as practicable, as directed by his or her supervising agent. Under the rule, a person placed on probation must provide the DNA sample at the office of a county sheriff as soon after the placement as practicable, or as directed by his or her supervising agent.

This bill specifies that a requirement to provide a DNA sample does not expire when a person completes serving probation, a sentence, or delinquency disposition or is released from commitment. For example, if a person is required to provide a DNA sample because he or she was in prison for a felony on or after January 1, 2000, and the person does not provide the DNA sample before leaving prison, he or she is still required to provide a DNA sample. In addition, the bill provides that regardless of whether a person already provided a DNA sample, if DOJ does not have DNA analysis results for the person, the department may require the person to provide another DNA sample.

The bill establishes a process under which a district attorney may petition the court to compel a person to provide a DNA sample if the person is required to provide a DNA sample but refuses or fails to do so. Under the bill, if the district attorney demonstrates reasonable cause to believe that a person is required to provide a DNA sample and that DOJ does not have DNA analysis results from the person, and further establishes the circumstances under which the requirement for the person to provide a DNA sample arose, the court must order the person to appear for a hearing to show cause why he or she is not required to provide a DNA sample or to provide a DNA sample before the hearing date. If the person does not provide a DNA sample before the hearing and, at the hearing, the person does not disprove the district attorney's claim that the person is required to provide a DNA sample, the court must issue an order to facilitate collection of a DNA sample from the person, which may include detention of the person or use of reasonable force. Under the bill, the rules of evidence, other than rules for admissibility and privileges, do not apply to proceedings on a petition to compel a person to provide a DNA sample.

The bill provides that people who are required to provide a DNA sample must provide it as follows:

1. A person sentenced to prison or a juvenile correction facility must provide the DNA sample while in prison or the facility, as directed by DOC; and if the person does not provide the DNA sample while in prison or the facility, then as soon as

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X practicable after release at a sheriff's office <sup>except if</sup> or as directed by the person's supervising agent. <sup>otherwise</sup>

X 2. A person placed on probation by a court in this state must provide the DNA sample as soon as practicable after placement at the sheriff's office <sup>except if</sup> or as directed by the person's supervising agent. <sup>otherwise</sup>

T 3. A person placed on parole or probation in this state from another state, if directed by DOC to provide a DNA sample, must provide the DNA sample, as soon as practicable after release at the office of the county sheriff <sup>except if</sup> or as directed by the person's supervising agent. <sup>otherwise</sup>

X 4. A juvenile placed on supervision shall provide the DNA sample as soon as practicable after placement at the sheriff's office <sup>except if</sup> or as directed by the agency providing supervision. <sup>otherwise</sup>

5. A person sentenced to jail or a county house of corrections must provide the DNA sample as directed by the sheriff as soon as practicable after sentencing; and if the person does not provide the biological specimen while in jail or the house of corrections, as soon as practicable after release at a sheriff's office.

6. A person committed to the Department of Health Services (DHS) must provide the DNA sample as directed by DHS.

7. If none of the above applies, the person must provide the DNA sample as soon as practicable after the obligation to provide a DNA sample arises at the sheriff's office <sup>except if</sup> or as directed by the agency providing supervision or having custody of the person. <sup>otherwise</sup>

Finally, the bill provides that a person found not guilty by reason of mental disease or defect, or in institutional care, on or after January 1, 2000, for a felony or certain specified misdemeanors must provide a DNA sample. In addition a person convicted, found not guilty by reason or mental disease or defect, or placed in institutional care on or after January 1, 2000 for failure to provide a DNA sample must provide a DNA sample as a result of the conviction, finding, or placement.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 165.76 (1) (intro.) of the statutes is amended to read:

2           165.76 (1) (intro.) ~~Except as provided in sub. (3), a~~ A person shall comply with  
3           ~~the requirements under this section~~ provide a biological specimen to the state crime  
4           laboratories for deoxyribonucleic acid analysis if he or she meets any of the following  
5           criteria:

6           **SECTION 2.** 165.76 (1) (a) of the statutes is amended to read:

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1           165.76 (1) (a) Is or was in a juvenile correctional facility, as defined in s. 938.02  
2           (10p), or a secured residential care center for children and youth, as defined in s.  
3           938.02 (15g), or on probation, extended supervision, parole, supervision, or aftercare  
4           supervision on or after August 12, 1993, for any violation of s. 940.225 (1) or (2),  
5           948.02 (1) or (2), 948.025, or 948.085.

6           **SECTION 3.** 165.76 (1) (ag) of the statutes is amended to read:

7           165.76 (1) (ag) Is or was in prison on or after August 12, 1993, and before  
8           January 1, 2000, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), or 948.025.

9           **SECTION 4.** 165.76 (1) (ar) of the statutes is amended to read:

10          165.76 (1) (ar) Is or was in prison on or after January 1, 2000, for a felony  
11          committed in this state.

12          **SECTION 5.** 165.76 (1) (av) of the statutes is created to read:

13          165.76 (1) (av) Is or was found guilty on or after January 1, 2000, of any felony  
14          or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

15          **SECTION 6.** 165.76 (1) (b) of the statutes is amended to read:

16          165.76 (1) (b) Is Has been found not guilty or not responsible by reason of  
17          mental disease or defect on or after August 12, 1993, and committed under s. 51.20  
18          or 971.17 for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

19          **SECTION 7.** 165.76 (1) (br) of the statutes is created to read:

20          165.76 (1) (br) Has been found not guilty or not responsible by reason of mental  
21          disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17,  
22          for any felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

23          **SECTION 8.** 165.76 (1) (c) of the statutes is amended to read:

24          165.76 (1) (c) Is or was in institutional care on or after August 12, 1993, for any  
25          violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

**BILL**

1           **SECTION 9.** 165.76 (1) (cr) of the statutes is created to read:

2           165.76 (1) (cr) Is or was in institutional care on or after January 1, 2000, for  
3 a felony or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

4           **SECTION 10.** 165.76 (1) (d) of the statutes is amended to read:

5           165.76 (1) (d) ~~Is~~ Has been found to be a sexually violent person under ch. 980  
6 on or after June 2, 1994.

7           **SECTION 11.** 165.76 (1) (e) of the statutes is amended to read:

8           165.76 (1) (e) Is or was released on parole or extended supervision or placed on  
9 probation in another state before January 1, 2000, and is or was on parole, extended  
10 supervision, or probation in this state from the other state under s. 304.13 (1m),  
11 304.135, or 304.16 on or after July 9, 1996, for a violation of the law of the other state  
12 that the department of corrections determines, under s. 304.137 (1), is comparable  
13 to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

14           **SECTION 12.** 165.76 (1) (f) of the statutes is amended to read:

15           165.76 (1) (f) Is or was released on parole or extended supervision or placed on  
16 probation in another state on or after January 1, 2000, and is or was on parole,  
17 extended supervision, or probation in this state from the other state under s. 304.13  
18 (1m), 304.135, or 304.16 for a violation of the law of the other state that the  
19 department of corrections determines, under s. 304.137 (2), would constitute a felony  
20 if committed by an adult in this state.

21           **SECTION 13.** 165.76 (1) (g) of the statutes is created to read:

22           165.76 (1) (g) Has been required by a court under s. 51.20 (13) (cr), 938.34  
23 (15m), 971.17 (1m) (a), 973.047, or 980.063 to provide a biological specimen to the  
24 state crime laboratories for deoxyribonucleic acid analysis.

25           **SECTION 14.** 165.76 (1) (h) of the statutes is created to read:

**BILL**

1           165.76 (1) (h) Is notified by the department of justice, the department of  
2           corrections, a district attorney, or a county sheriff under sub. (1m) that the person  
3           is required to provide a biological specimen.

4           **SECTION 15.** 165.76 (1m) of the statutes is created to read:

5           165.76 (1m) If a person is required to provide a biological specimen under sub.  
6           (1) (a) to (g) and the department of justice does not have the data obtained from  
7           analysis of a biological specimen from the person that the department is required to  
8           maintain in the data bank under s. 165.77 (3), the department may require the  
9           person to provide a biological specimen, regardless of whether the person previously  
10          provided a biological specimen under this section or s. 51.20 (13) (cr), 938.34 (15),  
11          971.17 (1m) (a), 973.047, or 980.63. The department of justice, the department of  
12          corrections, a district attorney, or a county sheriff, shall notify any person whom the  
13 <sup>of</sup> department of justice requires to provide a biological specimen under this subsection.

14          **SECTION 16.** 165.76 (2) of the statutes is repealed.

15          **SECTION 17.** 165.76 (2m) of the statutes is created to read:

16          165.76 (2m) Unless otherwise provided by rule under sub. (4), a person who is  
17          required to provide a biological specimen under sub. (1) shall provide the biological  
18          specimen at the following time and place:

19          (a) If the person has been placed on probation by a court in this state, as soon  
20          as practicable after placement <sup>except, if</sup> at the office of a county sheriff <sup>otherwise</sup> or as directed by the  
21          person's probation, extended supervision, and parole agent. <sup>then as directed by the agent</sup>

22          (b) If the person has been on probation, parole, or extended supervision in this  
23          state from another state and the department of corrections directs the person to  
24          provide a biological specimen, as soon as practicable after placement at the office of

## BILL

1 a county sheriff or as directed by the person's probation, extended supervision, and  
2 parole agent, then as directed by the agent

3 (c) If the person has been placed on supervision as a juvenile, as soon as  
4 practicable after placement, at the office of a county sheriff or as directed by the  
5 agency providing supervision, then as directed  
6 by the agency

7 (d) If the person has been sentenced to prison, while in prison as directed by  
8 the department of corrections; and if the person does not provide the biological  
9 sample while in prison, then as soon as practicable after release from the prison, at

10 the office of a county sheriff or as directed by his or her probation, parole, and  
11 extended supervision agent, then as directed by the agent

12 (e) If the person has been placed in a juvenile correctional facility, while in the  
13 juvenile correctional facility, as directed by the department of corrections; and if the  
14 juvenile does not provide the biological specimen while in the juvenile correctional

15 facility, then as soon as practicable after release from the juvenile correctional  
16 facility, at the office of a county sheriff or as directed by the agency providing  
17 supervision, then as directed by the agency

18 (f) If the person has been sentenced to a county jail or county house of  
19 corrections, as directed by the office of the county sheriff as soon as practicable after  
20 sentencing; and if the person does not provide the biological specimen while in the  
21 county jail or county house of corrections, as soon after release from the county jail  
22 or county house of corrections as practicable, at the office of a county sheriff.

23 (g) If the person has been committed to the department of health services under  
24 s. 51.20 or 971.17 or found to be a sexually violent person under ch. 980, as directed  
by the department of health services.

**BILL****SECTION 17**

(h) If pars. (a) to (g) do not apply, as soon as practicable after the obligation to provide a biological specimen accrues at the office of a county sheriff or as directed by the agent or agency providing supervision or having legal or physical custody of the person.

**SECTION 18.** 165.76 (2r) of the statutes is created to read:

165.76 (2r) Failure by a person who is required to provide a biological specimen under sub. (1) to provide the biological specimen at the time and place provided under sub. (2m) does not relieve the person of the obligation to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

**SECTION 19.** 165.76 (3) of the statutes is amended to read:

165.76 (3) If Notwithstanding sub. (1), if a county sheriff, the department of corrections, or the department of health services determines that a person who is required to submit a biological specimen under s. 51.20 (13) (er), 938.34 (15), 971.17 (1m) (a), 973.047 or 980.063, he or she shall comply with that requirement and is not required to comply with this section sub. (1) has submitted a biological specimen and that data obtained from analysis of the person's biological specimen is included in the data bank under s. 165.77 (3), the person is not required to submit another biological specimen.

**SECTION 20.** 165.76 (4) of the statutes is amended to read:

165.76 (4) The department of justice shall may promulgate rules necessary to ~~carry out its duties under to implement~~ this section.

**SECTION 21.** 165.76 (6) of the statutes is created to read:

165.76 (6) (a) If a person who is required to provide a biological specimen under sub. (1) refuses or fails to provide a biological specimen, a district attorney may file a petition with the circuit court for an order compelling the person to provide a

**BILL**

1 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.  
2 A petition under this paragraph shall establish reasonable cause to believe that the  
3 the person is required to provide a biological specimen under sub. (1) and that the  
4 person's biological specimen is not included in the data bank under s. 165.77 (3), and  
5 shall establish the circumstances under which the requirement to provide the  
6 biological specimen arose.

7 (b) If the court determines that a district attorney's petition satisfies the  
8 conditions under par. (a), the court shall issue an order requiring the person to  
9 appear in court at a specified time for a hearing to show cause why he or she is not  
10 required to provide a biological specimen under sub. (1) or to provide a biological  
11 specimen at the office of the county sheriff before the time for which the hearing is  
12 scheduled. The hearing shall be scheduled for not less than 10 and not more than  
13 45 days after the date the court enters the order. The order, together with a copy of  
14 the petition and any supporting material, shall be personally served upon the person  
15 in the manner provided for serving a summons under s. 801.11. The order shall be  
16 in substantially the following form:

STATE OF WISCONSIN

CIRCUIT COURT : .... COUNTY

STATE OF WISCONSIN

File No. ....

vs.

O R D E R

A.B.

Address

City, State, Zip Code

, Respondent

, instead of appearing at the hearing,

**BILL**

THE STATE OF WISCONSIN, To the Respondent named above:

Unless you choose to contest this Order, by appearing at the time, date, and place set forth below, you are ordered to present yourself to the .... county sheriff, [ADDRESS], no later than ...., between the hours of .... and ...., for the collection of a biological specimen, obtained by buccal swab, for deoxyribonucleic acid (DNA) analysis and inclusion of the results of that analysis in the state crime laboratory's DNA database. YOU MUST BRING A COPY OF THIS ORDER WITH YOU. YOU MUST ALSO BRING TWO FORMS OF IDENTIFICATION, INCLUDING ONE FORM OF GOVERNMENT-ISSUED, PHOTOGRAPHIC IDENTIFICATION. A copy of the petition submitted to obtain this order is attached.

If you wish to contest this order, you may do so by appearing in person at the time, date, and place set forth <sup>below</sup> ~~above~~, at which time you will have the opportunity to show cause to the court why you should not be required to provide a biological specimen for DNA analysis:

[Court information]

If you do not appear in person to contest this order at the time, date, and place set forth above, and you do not either present yourself for collection of a biological specimen as directed, all of the following apply:

1. You may be held in contempt of court and be subject to sanctions as provided in chapter 785 of the Wisconsin Statutes.

2. The court will issue an order to facilitate collection of a biological specimen which, in the court's discretion, may authorize detention or use of reasonable force against you to collect the biological specimen.

Dated: ...., .... (year)

By the Court signed: ....

**BILL**

1           This Order is entered under section 165.76 (6) of the Wisconsin Statutes. A copy  
2 of that section is attached.

3           (c) At a hearing on a petition under par. (a), the person has the burden of  
4 rebutting the matters established in the petition by demonstrating that he or she is  
5 not required to submit a biological specimen under sub. (1).

6           (d) If the court determines after the hearing under par. (c) that the person is  
7 required to submit a biological specimen under sub. (1) and that the person's  
8 specimen is not included in the data bank under s. 165.77 (3), the court shall issue  
9 an order to facilitate collection of a biological specimen from the person, which may  
10 authorize detention of the person or use of reasonable force against the person to  
11 collect the biological specimen.

12           **SECTION 22.** 801.50 (5v) of the statutes is created to read:

13           801.50 (5v) Venue of an action under s. 165.76 (6) shall be in any of the following  
14 counties:

15           (a) The county where the respondent resides.

16           (b) The county in which a court order requiring the respondent to submit a  
17 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis  
18 was entered.

19           (c) The county in which any court proceeding was held that resulted in a  
20 requirement that the respondent submit a biological specimen to the state crime  
21 laboratories for deoxyribonucleic acid analysis.

22           **SECTION 23.** 814.61 (1) (c) 7. of the statutes is created to read:

23           814.61 (1) (c) 7. An action under s. 165.76 (6) to compel provision of a biological  
24 specimen for deoxyribonucleic acid analysis.

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**SECTION 24.** 911.01 (4) (c) of the statutes, as affected by 2009 Wisconsin Act 28,  
is amended to read:

911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting or revoking probation, modification of a sentence under s. 302.1135, adjustment of a bifurcated sentence under s. 973.195 (1r), release to extended supervision under s. 302.113 (2) (b) or 304.06 (1) or discharge under s. 973.01 (4m), issuance of arrest warrants, criminal summonses and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969; and proceedings under s. 165.76 (6) to compel provision of a biological specimen for deoxyribonucleic acid analysis.

**SECTION 25.** 971.17 (1m) (a) of the statutes is amended to read:

971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a felony or a violation of s. 940.225 (1), 948.02 (1) or (2), 948.025, or 948.085 165.765 (1), 940.225 (3m), 944.20, or 948.10, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

**SECTION 26.** 973.047 (1f) of the statutes is amended to read:

973.047 (1f) If a court imposes a sentence or places a person on probation for a felony conviction or for a conviction for a violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

**(END)**

**Ryan, Robin**

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**From:** Rinehart, Mark W. [RinehartMW@DOJ.STATE.WI.US]  
**Sent:** Tuesday, March 16, 2010 4:50 PM  
**To:** Ryan, Robin  
**Subject:** DNA submissions/LRB-4251/2

Hello Robin,

The two emails below contain a total of four minor changes to LRB 4251/2. We're really hoping these are the last changes. Thanks again for working so hard and quickly on this draft.

---

**From:** St. John, Kevin M.  
**Sent:** Tuesday, March 16, 2010 3:31 PM  
**To:** St. John, Kevin M.; Rinehart, Mark W.  
**Subject:** RE: Still waiting for final feedback DNA.

Here's the final (I hope) changes desire:

Page 11, line 10: ADD "the arrest of," after "authorize"; ADD "of," after "detention, so that the subsection reads:

(d) If the court determines after the hearing under par. (c) that the person is required to submit a biological specimen under sub. (1) and that the person's specimen is not included in the data bank under s. 165.77 (3), the court shall issue an order to facilitate collection of a biological specimen from the person, which may authorize the arrest of, detention of, or use of reasonable force against the person to collect the biological specimen.

The drafter might improve the syntax, make sure serial commas are consistent, etc., but the important point is to use "arrest."

Page 10, line 21, ADD "the arrest," after "authorize" so that the section reads:

The court will issue an order to facilitate collection of a biological specimen which, in the court's discretion, may authorize the arrest, detention or use of reasonable force against you to collect the biological specimen.

Again, the syntax might be improved, but the point is for the form to mirror the authority.

This can be sent along with the changes below.

Thanks,

Kevin

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**From:** St. John, Kevin M.  
**Sent:** Tuesday, March 16, 2010 2:00 PM  
**To:** Rinehart, Mark W.  
**Subject:** Still waiting for final feedback DNA.

Don L. sent an email, but I'm waiting for more.

03/17/2010

Until then, here are the typos:

- ✓ Page 9, ln. 9, strike "or"
- ✓ Page 10, ln. 16, strike "either"

You can hold this until we get the order/sheriff obligation worked out.

Kevin St. John  
Special Assistant Attorney General  
For Public Affairs and Policy  
Wisconsin Department of Justice  
Office of the Attorney General  
114 East State Capitol  
P.O. Box 7857  
Madison, WI 53707-7857  
Ph: (608) 266-1221  
Fax: (608) 267-2779



State of Wisconsin  
2009 - 2010 LEGISLATURE

3  
LRB-4251/2

RLR&RPN:nwn&kjf:rs

Today

2009 BILL

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7 for deoxyribonucleic acid analysis.

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***Analysis by the Legislative Reference Bureau***

Under current law, certain people are required to provide a deoxyribonucleic acid (DNA) sample to the Department of Justice (DOJ), and DOJ is required to analyze the sample and include results of the analysis in a DNA data bank. Since 1993, persons sentenced, or in prison, for certain sexual assaults have been required to provide DNA samples. Since 2000, persons sentenced, or in prison, for any felony and several specified misdemeanors have been required to provide DNA samples. In addition, persons committed as sexually violent persons, persons found not guilty by reason of mental disease or defect for certain sexual assaults, and juveniles adjudicated delinquent for certain sexual assaults or, at the discretion of the court, certain other offenses, are required to provide a DNA sample. A person who intentionally fails to comply with a requirement to provide a DNA sample is guilty of a misdemeanor.

**BILL**

X  
x  
x  
Current statutes specify when and where each category of people required to provide a DNA sample must provide the DNA sample. Administrative rules also specify when and where people must provide DNA samples, although the rule requirements are somewhat different than the statutory requirements for certain categories. For example, under both the statute and the rule, a person sentenced to prison must provide a DNA sample while in prison if directed to do so by the Department of Corrections (DOC). If the person does not provide the DNA sample while in prison, under the statute, the person must provide the sample at the sheriff's office as soon as practicable after release, as directed by a supervising agent; and under the rule, the person must provide the sample at the sheriff's office or as directed by his or her supervising agent. Under the statutes, a person placed on probation must provide the DNA sample at the office of a county sheriff as soon after placement as practicable, as directed by his or her supervising agent. Under the rule, a person placed on probation must provide the DNA sample at the office of a county sheriff as soon after the placement as practicable, or as directed by his or her supervising agent.

This bill specifies that a requirement to provide a DNA sample does not expire when a person completes serving probation, a sentence, or delinquency disposition or is released from commitment. For example, if a person is required to provide a DNA sample because he or she was in prison for a felony on or after January 1, 2000, and the person does not provide the DNA sample before leaving prison, he or she is still required to provide a DNA sample. In addition, the bill provides that regardless of whether a person already provided a DNA sample, if DOJ does not have DNA analysis results for the person, the department may require the person to provide another DNA sample. <sup>a</sup>

The bill establishes a process under which a district attorney may petition the court to compel a person to provide a DNA sample if the person is required to provide a DNA sample but refuses or fails to do so. Under the bill, if the district attorney demonstrates reasonable cause to believe that a person is required to provide a DNA sample and that DOJ does not have DNA analysis results from the person, the court must order the person to appear for a hearing to show cause why he or she is not required to provide a DNA sample or to provide a DNA sample before the hearing date. If the person does not provide a DNA sample before the hearing and, at the hearing, the person does not disprove the district attorney's claim that the person is required to provide a DNA sample, the court must issue an order to facilitate collection of a DNA sample from the person, which may include detention of the person or use of reasonable force. Under the bill, the rules of evidence, other than rules for admissibility and privileges, do not apply to proceedings on a petition to compel a person to provide a DNA sample. <sup>arrest or</sup>

The bill provides that people who are required to provide a DNA sample must provide it as follows:

1. A person sentenced to prison or a juvenile correctional facility must provide the DNA sample while in prison or the facility, as directed by DOC; and if the person does not provide the DNA sample while in prison or the facility, then as soon as

**BILL**

practicable after release at a sheriff's office, except if directed otherwise by the person's supervising agent.

2. A person placed on probation by a court in this state must provide the DNA sample as soon as practicable after placement at the sheriff's office, except if directed otherwise by the person's supervising agent.

3. A person placed on parole or probation in this state from another state, if directed by DOC to provide a DNA sample, must provide the DNA sample, as soon as practicable after release at the office of the county sheriff, except if directed otherwise by the person's supervising agent.

4. A juvenile placed on supervision shall provide the DNA sample as soon as practicable after placement at the sheriff's office, except if directed otherwise by the agency providing supervision.

5. A person sentenced to jail or a county house of corrections must provide the DNA sample as directed by the sheriff as soon as practicable after sentencing; and if the person does not provide the biological specimen while in jail or the house of corrections, as soon as practicable after release at a sheriff's office.

6. A person committed to the Department of Health Services (DHS) must provide the DNA sample as directed by DHS.

7. If none of the above applies, the person must provide the DNA sample as soon as practicable after the obligation to provide a DNA sample arises at the sheriff's office, except if directed otherwise by the agency providing supervision or having custody of the person.

Finally, the bill provides that a person found not guilty by reason of mental disease or defect, or in institutional care, on or after January 1, 2000, for a felony or certain specified misdemeanors must provide a DNA sample. In addition a person convicted, found not guilty by reason or mental disease or defect, or placed in institutional care on or after January 1, 2000 for failure to provide a DNA sample must provide a DNA sample as a result of the conviction, finding, or placement.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 165.76 (1) (intro.) of the statutes is amended to read:

2           165.76 (1) (intro.) ~~Except as provided in sub. (3), a~~ A person shall comply with  
3 the requirements under this section provide a biological specimen to the state crime  
4 laboratories for deoxyribonucleic acid analysis if he or she meets any of the following  
5 criteria:

6           **SECTION 2.** 165.76 (1) (a) of the statutes is amended to read:

**BILL****SECTION 2**

1        165.76 (1) (a) Is or was in a juvenile correctional facility, as defined in s. 938.02  
2        (10p), or a secured residential care center for children and youth, as defined in s.  
3        938.02 (15g), or on probation, extended supervision, parole, supervision, or aftercare  
4        supervision on or after August 12, 1993, for any violation of s. 940.225 (1) or (2),  
5        948.02 (1) or (2), 948.025, or 948.085.

6        **SECTION 3.** 165.76 (1) (ag) of the statutes is amended to read:

7        165.76 (1) (ag) Is or was in prison on or after August 12, 1993, and before  
8        January 1, 2000, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), or 948.025.

9        **SECTION 4.** 165.76 (1) (ar) of the statutes is amended to read:

10       165.76 (1) (ar) Is or was in prison on or after January 1, 2000, for a felony  
11       committed in this state.

12       **SECTION 5.** 165.76 (1) (av) of the statutes is created to read:

13       165.76 (1) (av) Is or was found guilty on or after January 1, 2000, of any felony  
14       or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

15       **SECTION 6.** 165.76 (1) (b) of the statutes is amended to read:

16       165.76 (1) (b) Is Has been found not guilty or not responsible by reason of  
17       mental disease or defect on or after August 12, 1993, and committed under s. 51.20  
18       or 971.17 for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

19       **SECTION 7.** 165.76 (1) (br) of the statutes is created to read:

20       165.76 (1) (br) Has been found not guilty or not responsible by reason of mental  
21       disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17,  
22       for any felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

23       **SECTION 8.** 165.76 (1) (c) of the statutes is amended to read:

24       165.76 (1) (c) Is or was in institutional care on or after August 12, 1993, for any  
25       violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

**BILL**

1       **SECTION 9.** 165.76 (1) (cr) of the statutes is created to read:

2       165.76 (1) (cr) Is or was in institutional care on or after January 1, 2000, for  
3 a felony or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

4       **SECTION 10.** 165.76 (1) (d) of the statutes is amended to read:

5       165.76 (1) (d) ~~Is~~ Has been found to be a sexually violent person under ch. 980  
6 on or after June 2, 1994.

7       **SECTION 11.** 165.76 (1) (e) of the statutes is amended to read:

8       165.76 (1) (e) Is or was released on parole or extended supervision or placed on  
9 probation in another state before January 1, 2000, and is or was on parole, extended  
10 supervision, or probation in this state from the other state under s. 304.13 (1m),  
11 304.135, or 304.16 on or after July 9, 1996, for a violation of the law of the other state  
12 that the department of corrections determines, under s. 304.137 (1), is comparable  
13 to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

14       **SECTION 12.** 165.76 (1) (f) of the statutes is amended to read:

15       165.76 (1) (f) Is or was released on parole or extended supervision or placed on  
16 probation in another state on or after January 1, 2000, and is or was on parole,  
17 extended supervision, or probation in this state from the other state under s. 304.13  
18 (1m), 304.135, or 304.16 for a violation of the law of the other state that the  
19 department of corrections determines, under s. 304.137 (2), would constitute a felony  
20 if committed by an adult in this state.

21       **SECTION 13.** 165.76 (1) (g) of the statutes is created to read:

22       165.76 (1) (g) Has been required by a court under s. 51.20 (13) (cr), 938.34  
23 (15m), 971.17 (1m) (a), 973.047, or 980.063 to provide a biological specimen to the  
24 state crime laboratories for deoxyribonucleic acid analysis.

25       **SECTION 14.** 165.76 (1) (h) of the statutes is created to read:

**BILL****SECTION 14**

1           165.76 (1) (h) Is notified by the department of justice, the department of  
2           corrections, a district attorney, or a county sheriff under sub. (1m) that the person  
3           is required to provide a biological specimen.

4           **SECTION 15.** 165.76 (1m) of the statutes is created to read:

5           165.76 (1m) If a person is required to provide a biological specimen under sub.  
6           (1) (a) to (g) and the department of justice does not have the data obtained from  
7           analysis of a biological specimen from the person that the department is required to  
8           maintain in the data bank under s. 165.77 (3), the department may require the  
9           person to provide a biological specimen, regardless of whether the person previously  
10          provided a biological specimen under this section or s. 51.20 (13) (cr), 938.34 (15),  
11          971.17 (1m) (a), 973.047, or 980.63. The department of justice, the department of  
12          corrections, a district attorney, or a county sheriff, shall notify any person whom the  
13          department of justice requires to provide a biological specimen under this subsection.

14          **SECTION 16.** 165.76 (2) of the statutes is repealed.

15          **SECTION 17.** 165.76 (2m) of the statutes is created to read:

16          165.76 (2m) Unless otherwise provided by rule under sub. (4), a person who is  
17          required to provide a biological specimen under sub. (1) shall provide the biological  
18          specimen at the following time and place:

19               (a) If the person has been placed on probation by a court in this state, as soon  
20               as practicable after placement at the office of a county sheriff, except, if directed  
21               otherwise by the person's probation, extended supervision, and parole agent, then as  
22               directed by the agent.

23               (b) If the person has been on probation, parole, or extended supervision in this  
24               state from another state and the department of corrections directs the person to  
25               provide a biological specimen, as soon as practicable after placement at the office of

**BILL**

1 a county sheriff, except, if directed otherwise by the person's probation, extended  
2 supervision, and parole agent, then as directed by the agent.

3 (c) If the person has been placed on supervision as a juvenile, as soon as  
4 practicable after placement at the office of a county sheriff, except, if directed  
5 otherwise by the agency providing supervision, then as directed by the agency.

6 (d) If the person has been sentenced to prison, while in prison as directed by  
7 the department of corrections; and if the person does not provide the biological  
8 sample while in prison, then as soon as practicable after release from the prison at  
9 the office of a county sheriff, except, if directed otherwise by his or her probation,  
10 parole, and extended supervision agent, then as directed by the agent.

11 (e) If the person has been placed in a juvenile correctional facility or a secured  
12 residential care center for children and youth, while in the facility or center as  
13 directed by the department of corrections; and if the juvenile does not provide the  
14 biological specimen while in the facility or center, then as soon as practicable after  
15 release from the facility or center, at the office of a county sheriff, except, if directed  
16 otherwise by the agency providing supervision, then as directed by the agency.

17 (f) If the person has been sentenced to a county jail or county house of  
18 corrections, as directed by the office of the county sheriff as soon as practicable after  
19 sentencing; and if the person does not provide the biological specimen while in the  
20 county jail or county house of corrections, as soon after release from the county jail  
21 or county house of corrections as practicable, at the office of a county sheriff.

22 (g) If the person has been committed to the department of health services under  
23 s. 51.20 or 971.17 or found to be a sexually violent person under ch. 980, as directed  
24 by the department of health services.

**BILL**

1 (h) If pars. (a) to (g) do not apply, as soon as practicable after the obligation to  
2 provide a biological specimen accrues at the office of a county sheriff, except, if  
3 directed otherwise by the agent or agency providing supervision or having legal or  
4 physical custody of the person.

5 **SECTION 18.** 165.76 (2r) of the statutes is created to read: ✓

6 165.76 (2r) Failure by a person who is required to provide a biological specimen  
7 under sub. (1) to provide the biological specimen at the time and place provided under  
8 sub. (2m) does not relieve the person of the obligation to provide a biological specimen  
9 to the state crime laboratories for deoxyribonucleic acid analysis.

10 **SECTION 19.** 165.76 (3) of the statutes is amended to read: ✓

11 165.76 (3) If Notwithstanding sub. (1), if a county sheriff, the department of  
12 corrections, or the department of health services determines that a person who is  
13 required to submit a biological specimen under s. 51.20 (13) (cr), 938.34 (15), 971.17  
14 (1m) (a), 973.047 or 980.063, he or she shall comply with that requirement and is not  
15 required to comply with this section sub. (1) has submitted a biological specimen and  
16 that data obtained from analysis of the person's biological specimen is included in the  
17 data bank under s. 165.77 (3), the person is not required to submit another biological  
18 specimen.

19 **SECTION 20.** 165.76 (4) of the statutes is amended to read: ✓

20 165.76 (4) The department of justice ~~shall~~ may promulgate rules ~~necessary to~~  
21 ~~carry out its duties under~~ to implement this section.

22 **SECTION 21.** 165.76 (6) of the statutes is created to read: ✓

23 165.76 (6) (a) If a person who is required to provide a biological specimen under  
24 sub. (1) refuses or fails to provide a biological specimen, a district attorney may file  
25 a petition with the circuit court for an order compelling the person to provide a

# BILL

biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. A petition under this paragraph shall establish reasonable cause to believe that the the person is required to provide a biological specimen under sub. (1) and that the person's biological specimen is not included in the data bank under s. 165.77 (3).

(b) If the court determines that a district attorney's petition satisfies the conditions under par. (a), the court shall issue an order requiring the person to appear in court at a specified time for a hearing to show cause why he or she is not required to provide a biological specimen under sub. (1) or, instead of appearing at the hearing, ~~or~~ to provide a biological specimen at the office of the county sheriff before the time for which the hearing is scheduled. The hearing shall be scheduled for not less than 10 and not more than 45 days after the date the court enters the order. The order, together with a copy of the petition and any supporting material, shall be served upon the person in the manner provided for serving a summons under s. 801.11. The order shall be in substantially the following form:

STATE OF WISCONSIN                      CIRCUIT COURT :       .... COUNTY

STATE OF WISCONSIN File No. ....

VS. ORDER

A.B.

Address

City, State, Zip Code

, Respondent

THE STATE OF WISCONSIN, To the Respondent named above:

**BILL**

1 Unless you choose to contest this Order, by appearing at the time, date, and  
2 place set forth below, you are ordered to present yourself to the .... county sheriff,  
3 [ADDRESS], no later than ...., between the hours of .... and ....., for the collection of  
4 a biological specimen, obtained by buccal swab, for deoxyribonucleic acid (DNA)  
5 analysis and inclusion of the results of that analysis in the state crime laboratory's  
6 DNA database. YOU MUST BRING A COPY OF THIS ORDER WITH YOU. YOU  
7 MUST ALSO BRING TWO FORMS OF IDENTIFICATION, INCLUDING ONE  
8 FORM OF GOVERNMENT-ISSUED, PHOTOGRAPHIC IDENTIFICATION. A  
9 copy of the petition submitted to obtain this order is attached.

10 If you wish to contest this order, you may do so by appearing in person at the  
11 time, date, and place set forth below, at which time you will have the opportunity to  
12 show cause to the court why you should not be required to provide a biological  
13 specimen for DNA analysis:

14 [Court information]

15 If you do not appear in person to contest this order at the time, date, and place  
16 set forth above, and you do not either present yourself for collection of a biological  
17 specimen as directed, all of the following apply:

18 1. You may be held in contempt of court and be subject to sanctions as provided  
19 in chapter 785 of the Wisconsin Statutes.

20 2. The court will issue an order to facilitate collection of a biological specimen  
21 which, in the court's discretion, may authorize *arrest or* detention or use of reasonable force  
22 against you to collect the biological specimen.

23 Dated: ...., .... (year)

24 By the Court signed: ....

**BILL**

1 This Order is entered under section 165.76 (6) of the Wisconsin Statutes. A copy  
2 of that section is attached.

3 (c) At a hearing on a petition under par. (a), the person has the burden of  
4 rebutting the matters established in the petition by demonstrating that he or she is  
5 not required to submit a biological specimen under sub. (1).

6 (d) If the court determines after the hearing under par. (c) that the person is  
7 required to submit a biological specimen under sub. (1) and that the person's  
8 specimen is not included in the data bank under s. 165.77 (3), the court shall issue  
9 an order to facilitate collection of a biological specimen from the person, which may  
10 authorize detention of the person or use of reasonable force against the person to  
11 collect the biological specimen.

arrest or

12 **SECTION 22.** 801.50 (5v) of the statutes is created to read:

13 801.50 (5v) Venue of an action under s. 165.76 (6) shall be in any of the following  
14 counties:

15 (a) The county where the respondent resides.

16 (b) The county in which a court order requiring the respondent to submit a  
17 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis  
18 was entered.

19 (c) The county in which any court proceeding was held that resulted in a  
20 requirement that the respondent submit a biological specimen to the state crime  
21 laboratories for deoxyribonucleic acid analysis.

22 **SECTION 23.** 814.61 (1) (c) 7. of the statutes is created to read:

23 814.61 (1) (c) 7. An action under s. 165.76 (6) to compel provision of a biological  
24 specimen for deoxyribonucleic acid analysis.

## BILL

1           **SECTION 24.** 911.01 (4) (c) of the statutes, as affected by 2009 Wisconsin Act 28,  
2 is amended to read:

3           911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or  
4 rendition; sentencing, granting or revoking probation, modification of a sentence  
5 under s. 302.1135, adjustment of a bifurcated sentence under s. 973.195 (1r), release  
6 to extended supervision under s. 302.113 (2) (b) or 304.06 (1) or discharge under s.  
7 973.01 (4m), issuance of arrest warrants, criminal summonses and search warrants;  
8 hearings under s. 980.09 (2); proceedings under s. 971.14 (1) (c); proceedings with  
9 respect to pretrial release under ch. 969 except where habeas corpus is utilized with  
10 respect to release on bail or as otherwise provided in ch. 969; and proceedings under  
11 s. 165.76 (6) to compel provision of a biological specimen for deoxyribonucleic acid  
12 analysis.

13           **SECTION 25.** 971.17 (1m) (a) of the statutes is amended to read:

14           971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of  
15 mental disease or defect for a felony or a violation of s. 940.225 (1) or (2), 948.02 (1)  
16 or (2), 948.025, or 948.085 165.765 (1), 940.225 (3m), 944.20, or 948.10, the court shall  
17 require the person to provide a biological specimen to the state crime laboratories for  
18 deoxyribonucleic acid analysis.

19           **SECTION 26.** 973.047 (1f) of the statutes is amended to read:

20           973.047 (1f) If a court imposes a sentence or places a person on probation for  
21 a felony conviction or for a conviction for a violation of s. 165.765 (1), 940.225 (3m),  
22 944.20, or 948.10, the court shall require the person to provide a biological specimen  
23 to the state crime laboratories for deoxyribonucleic acid analysis.

24           (END)

**Basford, Sarah**

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**From:** Rinehart, Mark W. [RinehartMW@DOJ.STATE.WI.US]

**Sent:** Wednesday, March 17, 2010 1:39 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 09-4251/3 Topic: Submission of DNA samples to DOJ

Please Jacket LRB 09-4251/3 for the SENATE.

03/17/2010